

GOLD CREEK-SUSITNA NATIVE ASSOCIATION, INC.

IBLA 84-68

Decided May 23, 1984

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting in part Native group selection application. AA-11160.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Native Groups --
Alaska Native Claims Settlement Act: Native Land Selections:
Village Selections

BLM may properly reject a Native group selection application filed pursuant to section 14(h)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(h)(2) (1982), where, prior to Dec. 18, 1975, the land was withdrawn for village selections and at all times thereafter the land has been subject to a prior selection by a Native village corporation, such that the land is not available for selection under 43 CFR 2653.3(a).

APPEARANCES: Harold T. Larson, first vice president, Gold Creek-Susitna Native Association, Inc., for appellant; F. Christopher Bockmon, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management; Russ Winner, Esq., Anchorage, Alaska, for Cook Inlet Region, Inc.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

The Gold Creek-Susitna Native Association, Inc., a Native group certified in accordance with 43 CFR 2653.6(a), has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 30, 1983, rejecting in part its Native group selection application, AA-11160.

On January 15, 1976, appellant, comprised of 12 members, filed a Native group selection application for 3,840 acres of land pursuant to section 14(h)(2) of the Alaska Native Claims Settlement Act (ANCSA), as amended, 43 U.S.C. § 1613(h)(2) (1982). In its application, appellant requested five groups of land, each of which included approximately 3,840 acres and to which appellant assigned a priority from 1 to 5. By letters dated January 13,

1975, 1/ and June 25, 1976, the Cook Inlet Region, Inc. (CIRI), the "affected" Native regional corporation, concurred in appellant's selection application and recommended that BLM convey the maximum allowable acreage, i.e., 320 acres for each member, to appellant, in accordance with 43 CFR 2653.2(b).

By decision dated November 30, 1979, BLM in part approved for conveyance to CIRI the surface and subsurface estates of 33,666 acres of land and rejected appellant's selection application to the extent of a conflict. The affected land included a portion of appellant's number 1 priority land. BLM concluded that section 14(h) of ANCSA, supra, only authorized conveyance to Native groups of "unreserved and unappropriated public lands located outside areas withdrawn under secs. 11 and 16 of ANCSA" and that the affected land had been withdrawn "under sec. 11(a)(3) of ANCSA" on January 15, 1976, the date appellant's application was filed. Appellant filed no appeal from the November 1979 BLM decision. Accordingly, the decision is final for the Department.

In its September 1983 decision, BLM in part approved the surface and subsurface estates of additional land, totaling 172,979 acres, for conveyance to CIRI and further rejected appellant's selection application to the extent of a conflict. The affected land in this instance included a portion of appellant's number 1 and almost all of appellant's number 3 priority land. 2/ BLM again concluded that the land was not "unreserved and unappropriated" on January 15, 1976, because the lands "had been withdrawn on September 12, 1972 by Public Land Order 5255, as amended, pursuant to sec. 11(a)(3) of ANCSA, and were selected by village corporations under sec. 12(a) and 12(b) of ANCSA." Accordingly, BLM held that the land was not available for selection by appellant at that time.

In its statement of reasons for appeal, appellant contends that it has "valid existing rights" which predate the original ANCSA withdrawal of its land and that CIRI has entered into various agreements with respect to disposition of the land without including appellant as a signatory party or adequately protecting appellant's interests in any future development of the land.

[1] Section 14(h)(2) of ANCSA, supra, provides in relevant part that:

The Secretary is authorized to withdraw and convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 1610 and 1615 of this title and [as] follows:

1/ The letter is so dated. Although the file copy bears no BLM date-received stamp, we suspect the letter should be considered as dated Jan. 13, 1976, given the date the application was filed.

2/ The affected land is described as follows: T. 32 N., R. 1 E., Seward meridian, Alaska, sec. 30 (excluding U.S. Survey No. 5478); T. 29 N., R. 2 E., Seward meridian, Alaska, secs. 10, 15 (excluding U.S. Survey No. 5405), 16, 20, 21, 29.

* * * * *

(2) The Secretary may withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality. The subsurface estate in such land shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge. 3/

43 CFR 2653.3(a) provides that in addition to land not withdrawn for selection "by sections 1610 and 1615" of ANCSA, selections may be made

from any unappropriated and unreserved lands which the Secretary may withdraw from lands formerly withdrawn and not selected under section 16 of the Act and after December 18, 1975, from lands formerly withdrawn under section 11(a)(1) or 11(a)(3) and not selected under sections 12 and 19 of the Act. [Emphasis added.]

In the present case, the record indicates that the affected land was withdrawn, subject to valid existing rights, under section 11(a)(3) of ANCSA, 43 U.S.C. § 1610(a)(3) (1982), as deficiency land for the benefit of a Native village or regional corporation. See Public Land Order No. 5255 (37 FR 18915 (Sept. 16, 1972)). Moreover, prior to December 18, 1975, the affected land was selected by Native village corporations under section 12(a) of ANCSA, as amended, 43 U.S.C. § 1611(a) (1982), and those selections have not been relinquished. Accordingly, on January 15, 1976, the date appellant filed its application, and thereafter, the affected land has not been available for selection by a Native group under 43 CFR 2653.3(a). We conclude that BLM properly rejected appellant's Native group selection application in part. See Appeal of Wisenak, Inc., 1 ANCAB 157, 83 I.D. 496 (1976), aff'd, Wisenak, Inc. v. Andrus, 471 F. Supp. 1004 (D. Alaska 1979). Cf. Cook Inlet Region, Inc., 77 IBLA 383, 90 I.D. 543 (1983).

Nevertheless, appellant argues that it has "valid existing rights." We disagree. Appellant's rights as a Native group derive solely from section 14(h)(2) of ANCSA, supra, and under the provisions of that statutory provision and its implementing regulations appellant is simply not entitled to select the affected land where it is no longer unreserved and unappropriated. Moreover, even if appellant's members have used and occupied this land prior to the enactment of ANCSA, i.e., December 18, 1971, and any subsequent withdrawals or selections pursuant thereto, we are not aware of any statute which accords appellant, as a group, rights in this public land which are superior to those of the Native village corporations. Accordingly, while ANCSA provides for the protection of valid existing rights in the conveyance of lands thereunder, see 43 U.S.C. § 1613(g) (1982), appellant is not entitled to that protection.

3/ The record indicates that appellant is incorporated under the laws of Alaska and that, on Mar. 4, 1983, the Bureau of Indian Affairs certified that appellant is eligible as a Native group, pursuant to 43 CFR 2653.6(a).

Appellant also argues that it has unjustifiably been denied participation in various agreements which affect disposition of the land. The nature of these agreements and the probable reason why appellant did not participate therein is discussed in a letter from the Chief, Branch of ANCSA Adjudication, BLM, to appellant, dated August 26, 1983, at page 2:

The applications filed by the village corporations for the above-identified lands 4/ did not comply with the mandatory selection requirements for compactness and contiguity pursuant to statutory and regulatory requirements of ANCSA. Therefore, decisions rejecting these applications for these reasons were issued on May 10 through 17 of 1976. Appeals were filed by the village corporations and subsequently the Alaska Native Claims Appeal Board remanded the decisions to the Bureau of Land Management and suspended the appeals pending reconsideration and further action by BLM.

To resolve the problems of the validity of these selections, the villages entered into an agreement with Cook Inlet Region, Inc. on August 28, 1976. The agreement provided that upon conveyance of these lands to Cook Inlet Region, Inc., the surface estate of the lands under Sec. 12(a) selections would be reconveyed by CIRI to the appropriate village corporation. 5/ On August 31, 1976, the Secretary of the Interior and CIRI entered into an agreement wherein the Secretary agreed to convey to CIRI the surface and subsurface estate to all public lands as described in Appendix A and C of the agreement. CIRI would then reconvey the surface estate of some of the lands to the village corporations pursuant to the agreement of August 28, 1976 between CIRI and the village corporations. Shortly thereafter, P.L. 94-456 was passed by Congress on October 4, 1976 which gave the Secretary of the Interior the authority to convey these lands to CIRI. 6/

In summary, the whole intent of these agreements and P.L. 94-456 was to resolve the question of validity of the 12(a) selections made by the village corporations and to assist the villages in meeting their entitlements.

4/ These lands were appellant's priority numbers 1 to 3 lands, including the land involved herein.

5/ CIRI had filed a selection application for the land on June 28, 1977 (AA-13358), pursuant to section 12 of ANCSA, *supra*, which was approved in part in the September 1983 BLM decision. In addition, CIRI had filed another selection application for the land on Dec. 17, 1975 (AA-11153-20). 6/ Moreover, conveyance to CIRI pursuant to section 4(a) of the Act of Oct. 4, 1976, P.L. 94-456, 90 Stat. 1935 (1976), was for the express purpose of partially satisfying the entitlement of the Native village corporations within the Cook Inlet region, with respect to their selection applications which predate appellant's selection application.

You have asked in recent telephone conversations with this office as to why Gold Creek was never a party to this agreement when in fact Gold Creek's selection pre-dated these agreements. As stated earlier, selections were made by village corporations for these lands and therefore, their applications had the superior claim to these lands. Since Gold Creek did not have a valid claim to these lands, this may be one of the reasons why Gold Creek was not a party to the agreement.

We believe that this letter explains why appellant, to date, has been left out of decisionmaking with respect to disposition of the lands. In the absence of a "valid claim" to the land, this was appropriate.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1., the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge

